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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID HOUGH; *et al.*

Plaintiff,

v.

RYAN CARROLL; *et al.*,

Defendants.

CASE NO: 2:24-cv-02886-WLH-SK

**OPPOSITION TO MOTION TO
COMPEL WELLS FARGO BANK,
N.A., AND HOLD IN CONTEMPT
HSBC BANK USA AND JPMORGAN
CHASE & CO. [DISCOVERY
DOCUMENT: REFERRED TO
JUDGE STEVE KIM] BY NON-
PARTY JPMORGAN CHASE & CO.**

**[Declaration of Tamika A. Hull filed
Concurrently]**

Hearing: August 28, 2024

Time: Not identified

**TO THE HONORABLE COURT, AND TO ALL PARTIES AND THEIR
ATTORNEYS OF RECORD:**

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1 Non-party JPMorgan Chase & Co. (“**JPM&C**”) hereby submits the following
2 points and authorities in opposition to the motion by plaintiffs David Hough, et al.,
3 (“**Plaintiffs**”) seeking an order to hold JPM&C, among others, in contempt (the
4 “**Motion**”).

5 **MEMORANDUM**

6 **I. SUMMARY OF ARGUMENT – THE MOTION SHOULD BE**
7 **DENIED ON BOTH PROCEDURAL AND SUBSTANTIVE**
8 **GROUND**

9 By their Motion, Plaintiffs seek to compel production from Wells Fargo Bank,
10 N.A. and seek to impose contempt sanctions against JPM&C and HSBC Bank USA in
11 the amount of \$1,000 per day. Plaintiffs do not request an order to compel compliance
12 from JPM&C in the Motion or proposed order thereon and have not obtained an order
13 for compliance from this Court. As such, the Motion must be denied.

14 Even if Plaintiffs specifically sought to compel compliance with the subpoena
15 issued to JPM&C, which they have not, there is no just cause to compel production to
16 the subpoena issued by Plaintiffs, seeking records of subsidiary entities of JPM&C,
17 when Plaintiffs have failed to even establish by a cursory showing the requirement of
18 possession, custody, and/or control needed to compel any such production.

19 Furthermore, Plaintiffs have failed to demonstrate any basis for contempt
20 sanctions. This is particularly true because before seeking a contempt order against a
21 non-party, one must first seek and obtain an order for compliance. JPM&C is not a
22 party to this action and Plaintiffs have not sought to compel its compliance. Thus, the
23 request for contempt sanctions must be denied.

24 Moreover, despite an obligation to do so, Plaintiffs have not taken reasonable
25 steps to avoid imposing an undue burden on JPM&C as required under Federal Rules
26 of Civil Procedure (“**FRCP**”), Rule 45; and, Plaintiffs did not comply with the
27 procedural requirements under Local Rules 7-1, 37-1 to 37-2 and/or 45-1 before
28 presenting the instant Motion.

1 For these reasons, as discussed more fully below, the Motion should be denied.

2 **II. RELEVANT FACTS**

3 As set forth in the Motion, Plaintiffs issued the subject subpoena on May 29,
4 2024 (as amended), setting a proposed response date of June 17, 2024. *See* Motion at
5 6. At least by June 5, 2024, JPM&C advised Plaintiffs’ counsel that it was not the
6 appropriate entity to address the subpoena based upon the requested scope. *See*
7 Declaration of Plaintiffs’ counsel Banks, ¶ 18.

8 Notwithstanding counsel’s statement that he does “not know which of JP
9 Morgan Chase & Co.’s subsidiaries custodies the documents requested in the
10 subpoena” (*id.*, ¶ 22), counsel attests to the fact that as of June 5, 2024, JPM&C
11 informed Plaintiffs’ counsel of the appropriate entities to which the subpoena should
12 be directed. *See id.*, ¶ 18. Plaintiffs also acknowledge that JPM&C sent written
13 correspondence advising that the subpoena request was improper on this basis and
14 would be closed – effecting a timely objection to the subpoena.¹ *See* Motion at 10.

15 Yet, Plaintiffs declined to issue subpoenas to the appropriate entities. *See*
16 Motion

17 The “Jurisdictional Defendants”² in this action filed a motion to quash on June
18 14, 2024. Motion at 10. Once the motion to quash was pending, even if JPM&C had
19 not already advised Plaintiffs of its objection to the subpoena – which it had – it
20 would have been inappropriate for JPM&C to respond. *See, e.g., Goldwater Bank,*

21
22 ¹ FRCP Rule 45 does not require objections to be made in a specific format and
23 merely states it must be a “written objection”. *See* FRCP, Rule 45(d)(2)(B). Plaintiffs
24 acknowledge receipt of written correspondence from JPM&C as of June 6, 2024
25 advising them of the impropriety of the subpoena and that response would not be
26 made. *See* Banks’ Declaration, ¶ 20. Thus, even if the format was not in a traditional
27 ‘objection’ format, there can be no doubt that Plaintiffs were aware that JPM&C
28 would not respond and the specific reasons therefor. *See, e.g., 1 Moore's Answer*
Guide: Federal Discovery Practice § 14.14 (2024) (Rule 45 does not require than an
objection be specific).

² As defined in the Motion.

1 *N.A. v. Elizarov*, No. 5:21-cv-00616-JWH (SPx), 2023 U.S. Dist. LEXIS 116269, at
2 *9 (C.D. Cal. May 10, 2023) (party to whom subpoenaed records pertain can halt a
3 response by the subpoenaed party by bringing a motion to quash).

4 The motion to quash was pending until this Court issued its conditional order on
5 July 1, 2024. *See* Motion at 11. In the Court’s July 1, 2024 order, Plaintiffs’ counsel
6 was required to serve the subpoenaed parties with a copy of the order. *See* Order
7 (Docket No. 81).

8 In the Motion, Plaintiffs do not attest to serving the subject Order. *See* Motion.
9 And, while JPM&C received a copy of the Order, it was received through its agent for
10 service of process, which did not receive such correspondence until July 12, 2024 – a
11 mere 4 days before Plaintiffs filed the instant Motion. *See* Declaration of Tamika A.
12 Hull (“**Hull Declaration**”), ¶ 4. In response thereto, and because JPM&C is a holding
13 company and does not have possession, custody or control of account/bank
14 documents, the July 12, 2024 correspondence was routed to JPMorgan Chase Bank,
15 N.A.’s (“**Chase Bank**”) National Subpoena Processing (“**NSP**”) group *Id.*, ¶ 5. NSP
16 received the July 12, 2024 correspondence on July 15, 2024. *Id.*

17 On July 16, 2024, NSP left a message for Plaintiffs’ counsel to advise that the
18 incorrect entity was identified the subpoena. *Id.*, ¶ 6. NSP then issued a letter dated
19 July 17, 2024 responding to the July 12, 2024 correspondence. *Id.*, ¶ 7, Exhibit A. In
20 the July 17, 2024 letter, NSP explained that JPM&C is not the appropriate entity to
21 subpoena based upon the scope of the subpoena requests. NSP then identified
22 JPMorgan Chase Bank, N.A. as the appropriate entity for credit card, depository,
23 checking, savings, mortgage, and loan records; and, identified J.P. Morgan Securities
24 LLC as the appropriate entity for securities and investment records. NSP requested
25 that counsel serve a properly issued subpoena addressed to the correct entity/entities in
26 order for the materials to be produced. *Id.*, ¶ 8.

27 Of note, on July 18, 2024, NSP contacted attorney Banks again and requested
28 an extension to August 16, 2024. *Id.*, ¶ 9.

1 Plaintiffs filed the instant Motion on July 16, 2024; however, NSP’s records do
2 not reflect that Plaintiffs’ counsel disclosed the Motion to it when discussing the
3 subpoena on July 18, 2024. *See* Hull Declaration, ¶ 10.

4 Further, while Plaintiffs assert that JPM&C “did not respond” to the July 2,
5 2024 letter, what Plaintiffs fail to state is that they did not effect service in a manner
6 that would ensure delivery of the letter and July 1, 2024 order in a reasonable time –
7 particularly given the July 4th holiday. Instead, JPM&C did not receive the letter for
8 10 days. *See* Hull Declaration, ¶¶ 4-9.

9 JPM&C’s agent for service of process did not receive the Motion until July 23,
10 2024. *Id.*, ¶ 12. In response thereto, again because JPM&C is a holding company and
11 does not have possession, custody or control of account/bank documents, the July 23,
12 2024 package enclosing the Motion was routed to Chase Bank’s NSP group. NSP
13 received the July 23, 2024 Package on July 29, 2024. *Id.*, ¶ 13.

14 At no time did JPM&C or Chase Bank state to Plaintiffs’ counsel that
15 documents would not be produced if an appropriate subpoena was received. Instead,
16 as noted, NSP advised that subpoenas would need to be issued to the appropriate
17 entities in order for such production to be made. *Id.*, ¶ 14.

18 **III. ARGUMENT**

19 **a. Plaintiffs’ Parent-Subsidy Argument Does Not Support Compelling** 20 **Production**

21 Plaintiffs’ entire argument with regard to JPM&C is that JPM&C is “the parent
22 company” and therefore “has control over the documents maintained by its
23 subsidiaries”, making it an appropriate entity to which the subpoena should be
24 directed. *See* Motion at 20 (citing *U.S. v. Int’l Union of Petro. Indus. Wkrs.*, 870 F.2d
25 1450, 1452 (9th Cir. 1989)). Plaintiffs provide no evidentiary support for their
26 argument; and, instead, the only evidence presented – by way of counsel’s declaration
27 – demonstrates the inaccuracy of Plaintiffs’ argument. Indeed, Plaintiffs’ limited
28 argument in this regard is faulty for several reasons.

1 First, as initially noted, Plaintiffs have not moved for compliance with the
2 subpoena. *See* Motion; *see also* proposed order. Because JPM&C sent Plaintiffs its
3 written response on or about June 6, 2024, making a written response/objection to the
4 subpoena, Plaintiffs are required to move to compel compliance as a first step. *See*
5 *Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492, 494 n.5 (9th Cir. 1983).
6 Plaintiffs have failed to do so, and, therefore, the Motion should be denied.

7 Even if Plaintiffs could seek compliance by the Motion, despite their failure to
8 request such relief, the Motion should be denied. Initially, a party to whom a subpoena
9 for records is issued must produce only those records which are in its “possession,
10 custody or control.” FRCP, Rule 34(a). Here, Plaintiffs have been advised of the
11 entities to which subpoenas should be directed, but refuse to do so because JPM&C is
12 the “parent”. Plaintiffs’ position is unreasonable, they fail to consider the facts that
13 have been presented to them, and they fail to consider relevant authority.

14 A basic tenet of American corporate law is that a parent corporation is distinct
15 from a separately incorporated subsidiary. *Dole Food Co. v. Patrickson*, 538 U.S. 468,
16 475 (2003). (“A holding corporation does not own the subsidiary's property.”)
17 (quoting 1 W. Fletcher, *Cyclopedia of the Law of Private Corporations* § 31, at 514
18 (rev. ed. 1999)). Each corporation is a “distinct legal entity, with legal rights,
19 obligations, powers, and privileges different from those of the natural [or legal]
20 individuals who created it, who own it, or whom it employs.” *Cedric Kushner*
21 *Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001).

22 Because parent and subsidiary are legally distinct, a document held by a
23 subsidiary is not within the control of the parent, and therefore a parent cannot be
24 legally obligated at the threat of sanction to produce it, unless “the intracorporate
25 relationship establishes some legal right, authority or ability [of the parent] to obtain
26 requested documents on demand.” *See Stream Sicav v. Wang*, 2014 U.S. Dist. LEXIS
27 81098, at *10-11 (S.D.N.Y. June 12, 2014) (quoting *DeSmeth v. Samsung Am., Inc.*,
28 No. 92 Civ. 3710 (LBS) (RLE), 1998 U.S. Dist. LEXIS 1907, 1998 WL 74297, at *9

1 (S.D.N.Y. Feb. 20, 1998)); *see also In re Vivendi Universal, S.A. Sec. Litig.*, No. 02
2 Civ. 5571 (RJH) (HBP), 2009 U.S. Dist. LEXIS 131833, 2009 WL 8588405, at *3
3 (S.D.N.Y. July 10, 2009).

4 Critically relevant here, and as stated plainly in the only case cited by Plaintiffs:
5 the “party seeking production of documents bears the burden of proving that the
6 opposing party has such control.” *See Int’l Union of Petro. Indus. Wkrs.*, 870 F.2d at
7 1452 (citing *Norman v. Young*, 422 F.2d 470, 472-73 (10th Cir.1970)); *see also In re*
8 *Vivendi*, 2009 U.S. Dist. LEXIS 131833, at *3 (same).

9 Indeed, in the *Int’l Union of Petro. Indus. Wkrs.* case, cited by Plaintiffs, the
10 Court had to assess whether the union had control over documents held by a local
11 chapter, analyzing the union’s constitution and examining the specific facts regarding
12 whether actual control existed. *See Int’l Union of Petro. Indus. Wkrs.*, 870 F.2d at
13 1453-55. In that case, the required control was lacking and the order denying
14 enforcement of the subpoena was upheld. *Id.*; *see also 7-UP Bottling Co. v. Archer*
15 *Daniels Midland Co. (In re Citric Acid Litig.)*, 191 F.3d 1090, 1107 (9th Cir. 1999).

16 In the *7-UP* case, the Ninth Circuit affirmed the district court’s denial of a
17 motion to compel records between a parent and subsidiary, noting the two entities
18 were “separate entities under the law,” and there was “no contract giving C&L-US the
19 right to compel C&L-Switzerland to furnish it with documents in C&L-Switzerland’s
20 possession.” *Id.*

21 Indeed, even when there is significant evidence of common ownership,
22 overlapping management, connected sales and marketing networks and joint
23 commercial efforts, courts in the Ninth Circuit find a lack of requisite “control” where
24 “there is no specific showing that [the party corporation] has the legal right to obtain
25 any documents set forth in the document requests upon demand.” *Tessera, Inc. v.*
26 *Micron Tech., Inc.*, No. C-06-80024-MISC JW (PVT), 2006 LEXIS 25114 at *17
27 (N.D. Cal. Mar. 22, 2006).

28 Other federal courts are in accord. *See In re Fourworld Event Opportunities*

1 *Fund, L.P.*, No. 22-MC-330 (JPO), 2023 U.S. Dist. LEXIS 83209, at *5-6 (S.D.N.Y.
2 May 11, 2023) (same). In the *Fourworld* case, the New York District Court concluded
3 that JPMorgan Chase & Co. was not obligated to produce records from its subsidiary,
4 noting that “the facts did not permit a conclusion that the discovery sought was in J.P.
5 Morgan Chase's possession, custody, or control” *See id.* (citing *In re Mun*, No.
6 22MC163, 2022 U.S. Dist. LEXIS 226248, 2022 WL 17718815, at *3 (S.D.N.Y. Dec.
7 15, 2022)) for the same reasoning and result).

8 Applying these principals here, it is clear that Plaintiffs have failed to carry
9 their burden to demonstrate the requisite control to subject JPM&C to comply with the
10 subpoena that should have been issued to its subsidiaries. *See* Motion; *see also* Hull
11 Declaration, ¶¶ 4-13.

12 **b. Plaintiffs Fail to Establish Any Legal Grounds for Contempt or the**
13 **Sanctions Requested**

14 **i. Plaintiffs Seek An Order of Contempt Without Meeting Their**
15 **Initial Obligations to Avoid Undue Burden, Provide Notice,**
16 **and to Establish a Violation by Clear and Convincing Evidence**

17 Under Rule 45(d), a party issuing a subpoena has an obligation to “avoid
18 imposing undue burden or expense on a person subject to the subpoena”. *See* FRCP,
19 Rule 45(d)(1). As discussed, Plaintiffs have made no such effort here in the basic
20 issuance of the subpoena to JPM&C and not the appropriate entities (without even
21 mentioning the voluminous and broad materials requested therein).

22 Furthermore, under Rule 45(d), responses to a subpoena may be made by a
23 response, objection or motion to quash. *See* Rule 45(d)(2-3), (e). As set forth in the
24 Motion, JPM&C responded to Plaintiffs’ counsel by phone and written
25 correspondence by June 6, 2024, stating its objection³ to the subpoena and advising
26

27 ³ No contempt is available where a subpoenaed person has timely objected to a
28 document subpoena. *Broussard v. Lemons*, 186 F.R.D. 396, 397 (W.D. La. 1999)
(citing F.R.C.P. 45 (c)(2)(B); *In re The Exxon Valdez*, 142 F.R.D. 380, 384 (D.C. Cir.

1 that it would not comply until Plaintiffs issued the subpoena to the appropriate entities
2 (identifying those entities)⁴. *See* Motion at 10; *see* Banks’ Declaration, ¶¶ 18-20.

3 After the Court ruled on the Jurisdictional Defendants’ motion to quash,
4 Plaintiffs did not move to compel compliance from JPM&C nor did Plaintiffs issue
5 subpoenas to the appropriate entities; and, as noted, Plaintiffs did not even notify
6 JPM&C of the issuance of the order in a reasonable timeframe for compliance. *See*
7 Discussion, *supra*. Plaintiffs also failed to comply with Local Rules before submitting
8 the subject Motion. *See* Discussion, *infra*. And, in the Motion, Plaintiffs do not seek
9 compliance from JPM&C, but instead, seek only an order for contempt with daily
10 sanctions. The request for contempt and sanctions must be denied as there are no
11 grounds for such a sanctions award before an order for compliance has issued and the
12 party thereafter fails to comply.

13 Under Rule 45(g), in a contempt proceeding, the nonparty witness is entitled to
14 the “basic requirements of due process — adequate notice and proper hearing”
15 *Nguyen v. Golden (In re Pham)*, No. CC-17-1000-LSTa, 2017 Bankr. LEXIS 3844, at
16 *18 (B.A.P. 9th Cir. Nov. 6, 2017) (internal citation omitted). And “the moving party
17 has the burden of showing by clear and convincing evidence that the contemnors
18 violated a specific and definite order of the court.” *Id.* (quoting *Knupfer v. Lindblade*
19 *(In re Dyer)*, 322 F.3d 1178, 1190-91 (9th Cir. 2003) (citation omitted)). Plaintiffs fail
20 to make such a showing here and fail to seek a compliance order. As such, the Motion
21 as to JPM&C should be denied.

22 **ii. There Are No Grounds for the Requested Sanctions**

23 As a further consideration, even if the Court construed the instant Motion as
24 one for compliance, the contempt and sanctions request should be denied. That is,

25
26 1992), *citing Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492, 494 (9th Cir.
1983)).

27
28 ⁴ Plaintiffs’ assertion that they do not know which entities to address the subpoenas
(Motion at 20) is disingenuous.

1 other than a generalized statutory reference, Plaintiffs fail to identify any support for
2 the requested contempt sanction of \$1,000 per day – a wholly unreasonable and
3 punitive request. *See* Motion at 20.

4 While a Court may grant a motion to compel compliance with a Rule 45
5 subpoena, contempt and sanctions are not appropriate even where the nonparty has not
6 formally objected but has communicated with the subpoenaing party that it will not
7 respond absent certain requirements. *See, e.g., Miranda v. Hokinson*, No. 2:07-cv-
8 0609-JIIN-RC, 2008 U.S. Dist. LEXIS 126170, 2008 WL 11337227, at *2 (C.D. Cal.
9 Dec. 12, 2008) (granting motion to compel compliance with Rule 45 subpoena
10 because “[a]lthough defendants have not shown Kaiser objected to the subpoenas, and
11 plaintiff has not brought a motion to quash the subpoenas, . . . the Court infers that
12 Kaiser will not comply with defendants' subpoenas without a Court order” but finding
13 sanctions not warranted.); *see also Kleiman v. Wright (In re Subpoena to*
14 *Vaugenperling)*, No. 2:19-mc-00083-CAS(Ex), 2019 U.S. Dist. LEXIS 228062, at
15 *10 (C.D. Cal. Dec. 2, 2019). Thus, to the extent the June 6, 2024 response by
16 JPM&C may be construed as a response other than a “formal” objection, it was still
17 sufficient to advise Plaintiffs of JPM&C’s position and objection to compliance such
18 that sanctions are not warranted.

19 Additionally, after the motion to quash order was issued, Plaintiffs mailed the
20 order in a manner that did not result in reasonable time to respond and filed the subject
21 Motion a mere 4 days after JPM&C’s agent for service of process received the
22 package. As noted, NSP received the correspondence on July 15, 2024. *See* Hull
23 Declaration, ¶ 5. One day later, it left a message for Plaintiffs’ counsel to advise that
24 the incorrect entity was identified the subpoena. *Id.*, ¶ 6. NSP then issued a letter dated
25 July 17, 2024 responding to the July 12, 2024 correspondence. *Id.*, ¶ 7, Exhibit A.

26 In the July 17, 2024 letter, NSP explained that JPM&C is not the appropriate
27 entity to subpoena based upon the scope of the subpoena requests. NSP then identified
28 JPMorgan Chase Bank, N.A. as the appropriate entity for credit card, depository,

1 checking, savings, mortgage, and loan records; and, identified J.P. Morgan Securities
2 LLC as the appropriate entity for securities and investment records. NSP requested
3 that counsel serve a properly issued subpoena addressed to the correct entity/entities in
4 order for the materials to be produced. *Id.*, ¶ 8.

5 Also, on July 18, 2024, NSP contacted attorney Banks again and requested an
6 extension to August 16, 2024. *Id.*, ¶ 9. Plaintiffs filed the instant Motion on July 16,
7 2024; however, NSP's records do not reflect that Plaintiffs' counsel disclosed the
8 Motion to it when discussing the subpoena on July 18, 2024. *See* Hull Declaration, ¶
9 10. And, at no time did JPM&C or Chase Bank state to Plaintiffs' counsel that
10 documents would not be produced if an appropriate subpoena was received. Instead,
11 as noted, NSP advised that subpoenas would need to be issued to the appropriate
12 entities in order for such production to be made. *Id.*, ¶ 14.

13 These factors demonstrate adequate cause exists for the non-issuance of
14 production responsive to the subpoena. And, notably, "[a]dequate cause" for a failure
15 to obey a subpoena remains undefined and the relevant statutory notes make clear that
16 "because the command of the subpoena is not in fact one uttered by a judicial officer,
17 contempt should be very sparingly applied". *See* Rule 45(g) (Notes of Advisory
18 Committee). There is no basis to apply contempt or the sanctions sought in this
19 instance because JPM&C has provided adequate cause for not producing responsive
20 documents – it is not the proper entity to which the subpoena should be addressed.

21 Finally, as the Advisory Committee notes make clear, "[i]n civil litigation, it
22 would be rare for a court to use contempt sanctions without first ordering compliance
23 with a subpoena, and the order might not require all the compliance sought by the
24 subpoena. Often contempt proceedings will be initiated by an order to show cause,
25 and an order to comply or be held in contempt may modify the subpoena's
26 command." *See* Rule 45(g) (Notes of Advisory Committee); *see also Erickson v.*
27 *Builder Advisor Grp. LLC*, No. 22-mc-80094-TSH, 2022 U.S. Dist. LEXIS 77386, at
28 *7-8 (N.D. Cal. Apr. 28, 2022) (same).

1 Indeed, in denying a sanctions request (actually premised upon fees incurred
2 and not a wildly punitive and unsupported request as Plaintiffs have made here) the
3 Court in *Erickson* reasoned:

4 “In civil litigation, it would be rare for a court to use contempt sanctions
5 without first ordering compliance with a subpoena.” *Gordy v. Granlund*,
6 2019 U.S. Dist. LEXIS 133804, 2019 WL 3753184, at *2 (N.D. Cal.
7 Aug. 8, 2019) (quoting Advisory Comm. Note to 2013 Amendment to
8 Rule 45(g)). Thus, “many [c]ourts have noted . . . that [b]efore sanctions
9 can be imposed under [the Rule], there must be a court order compelling
10 discovery.” *Poturich v. Allstate Ins. Co.*, 2015 U.S. Dist. LEXIS 187149,
11 2015 WL 12766048, at *2 (C.D. Cal. Aug. 11, 2015) ((internal citations
12 and quotation marks omitted; alternations in the original); *see also In re*
13 *Plise*, 506 B.R. 870, 879 (B.A.P. 9th Cir. 2014) (“[I]n cases of nonparty
14 subpoenas under Civil Rule 45, the court must first issue an order
15 compelling the nonparty's compliance with the subpoena, and the
16 nonparty must fail to comply with the order before any contempt
17 sanctions can be awarded.”). No such order has issued here. Thus, even if
18 *Erickson* brought his request under Rule 45, the Court finds it would be
19 premature to find Builder Advisor Group in contempt. *See Poturich*,
20 2015 U.S. Dist. LEXIS 187149, 2015 WL 12766048, at *3 (finding Rule
37 is inapplicable to non-parties and declining to award sanctions under
Rule 45's contempt authority where there was no court order compelling
discovery in place); *Gordy*, 2019 U.S. Dist. LEXIS 133804, 2019 WL
3753184, at *2 (declining to hold non-party in contempt under Rule 45
where no order compelling non-party's compliance with subpoena had
issued)
Erickson, 2022 U.S. Dist. LEXIS 77386, at *7-8.

21 The same rationale should be applied here because it would indeed be
22 premature to issue sanctions, particularly here where Plaintiffs provide no evidentiary
23 support for the requested sum, when there has been no motion to compel compliance,
24 and no issuance of an order to comply. For these reasons, the requested sanctions
25 should be denied.

26 **c. Plaintiffs Failed to Comply with Local Rules**

27 Central District Local Rule 45-1 states that “[e]xcept with respect to motions
28 transferred to this district pursuant to F.R.Civ.P., 45(f), L.R. 37 applies to all motions

1 relating to discovery subpoenas served on (a) parties and (b) non-parties represented
2 by counsel. Further, Local Rule 37-1 to 37-2 requires a prefiling conference of
3 counsel and joint stipulation to be submitted. Plaintiffs did not attempt to meet these
4 requirements.

5 Moreover, under Local Rule 7-3, to the extent Plaintiffs contend they were
6 incapable of proceeding by the required joint stipulation, Plaintiffs were obligated to
7 attest to a pre-filing conference – but failed to do so.

8 Notably, Plaintiffs’ Motion fails to even include a notice of motion or identify
9 the hearing time or location. *See* Motion.

10 Plaintiffs’ failure to adhere to these requirements is sufficient for denial of the
11 Motion.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Motion should be denied in its entirety.
14

15 DATED: August 7, 2024

PARKER IBRAHIM & BERG LLP

16 By: /s/ Mariel Gerlt-Ferraro

17 JOHN M. SORICH

18 MARIEL GERLT-FERRARO

19 Attorneys for Non-Party

20 JPMorgan Chase & Co.
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF ORANGE

David Hough, et al v. Ryan Carroll, et al

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My address is 695 Town Center Drive, 16th Fl., Costa Mesa, CA 92626.

On August 7, 2024, I served the foregoing document **OPPOSITION TO MOTION TO COMPEL WELLS FARGO BANK, N.A., AND HOLD IN CONTEMPT HSBC BANK USA AND JPMORGAN CHASE & CO. [DISCOVERY DOCUMENT: REFERRED TO JUDGE STEVE KIM] BY NON-PARTY JPMORGAN CHASE & CO.** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

☐ **BY REGULAR MAIL:** I deposited the sealed envelope with the United States Postal Service with the Postage fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY THE ACT OF FILING OR SERVICE, THAT THE DOCUMENT WAS PRODUCED ON PAPER PURCHASED AS RECYCLED

☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

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☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on August 7, 2024, at Costa Mesa, California.

/s/ Rhonda K. Viers

Rhonda K. Viers

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